



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA060052

Petitioner, 323 Boylston Street LLC, seeks a determination from the Board of Appeals that proposed uses for the commercial space at the Cypress Lofts Condominium, Phase II, 323 Boylston Street, be allowed. Petitioner also requests that the Board of Appeals consider a modification of previously issued relief, Board of Appeals Case No. 030025.

On August 17, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed September 21, 2006, at 7:30 p.m. in the Selectmen's Conference Room on the sixth floor of the Town Hall as the time and place of a hearing on the petition. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published August 31, 2006 and September 7, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: 323 Boylston Street LLC

Location of Premises: 323 Boylston Street

Date of Hearing: 09/21/2006

Time of Hearing: 07:30 p.m.

Place of Hearing: Selectmen's Conference Room, 6th. Floor

A public hearing will be held to seek a determination from the Board of Appeals that a proposed use for the commercial space at the Cypress Lofts Condominium, Phase II, 323 Boylston Street, Brookline, Massachusetts be allowed. Property was subject to Board of Appeals relief, case #030025. Appellant also requests that the Board of Appeals consider a modification of the prior Decision, specifically, the condition requiring Board of Appeals approval of any proposed use of the commercial space.

at 323 Boylston Street

Said Premise located in a **G-2.0** District.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, the public hearing was opened and without testimony continued until Thursday, September 28, 2006 at 7:30 p.m. in the Selectman's Hearing Room on the sixth floor of Town Hall. The continued hearing was held at the appointed time

and location. Present at the hearing were Chair, Harry S. Miller and Board members Murray Shocket and Enid Starr.

Attorney Arthur Sneider, of Mulvey, Sneider & Freyman, PC, presented the petitioner's case. The petitioner proposes to use the commercial space at the Cypress Lofts Condominium, Phase II, 323 Boylston Street either as a child daycare center or as a mortgage brokerage office. The petitioner requested approval of these uses as required by Board of Appeals Case No. 030025 in condition #11. Attorney Sneider described the parking demand to be expected of the proposed uses and detailed the parking accommodations available to occupants of the commercial space. There are seven spaces dedicated to the commercial use, five of them inside the building. The owner has an additional nine spaces to the rear of the building which are also available should the need arise. No parking will be allowed on Boylston Street. In addition, the petitioner requested that Board of Appeals Case No. 030025 be modified so as to delete condition #11. Condition 11 states:

11. *The Board of Appeals shall approve any proposed use of the commercial space currently shown on the approved plan as "retail space".*

The petitioner feels that this requirement is vague, has no specific criteria and is an unfair encumbrance on the marketability of the property.

The Chair asked if anyone in the audience wanted to speak in favor or against the petition. There was no response.

The Chair then called on Polly Selkoe, Assistant Director for Regulatory Planning. She stated that the Planning Board voted unanimously to recommend approval of the two proposed uses and that if condition 11 should remain, criteria on the types of uses that would be considered

favorably by the Board of Appeals should be established by the Board of Appeals to serve as a guide during the review and approval process.

Mr. Frank Hitchcock spoke on behalf of the Building Department. He related how the zoning by-law requires additional protection along specific streets in Town, one of which is Boylston Street. He speculated that condition 11 may have been added by the Board of Appeals in an effort to control uses and parking. He stated that there is protection afforded in various sections of the by law. Mr. Hitchcock stated that the Building Department had no problem with either proposed use.

During deliberations, the Chair stated that he was not sure the actual parking conditions at the site warranted the scrutiny afforded by condition 11. Enid Starr felt the inclusion of condition 11 in the previous decision affected the marketability of the real estate and she was in favor of deletion of the condition. Murray Shocket stated that when the condition was written into the decision the uses and potential traffic/parking issues were unknown. Now that the building is done and parking appears not to be an issue it is not necessary to retain condition 11 as there are ample restrictions in the by law to afford protection. After discussion the Board voted unanimously to approve the use of the commercial space as either a child daycare center or a mortgage brokerage office and to delete condition #11 of Board of Appeals Case No. 030025.

Unanimous Decision of
The Board of Appeals

Filing Date

2001 NOV 10 PM 3:41
TOWN OF ROCKFORD
CLERK



Harry S. Miller

A True Copy:

ATTEST:

Patrick J. Ward

Clerk, Board of Appeals

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